MUNICIPAL CORPORATIONS — MUNICIPAL DEBTS AND CONTRACTS — LIABILITY FOR BENEFITS RECEIVED UNDER CONTRACTS THAT EXCEED DEBT LIMIT. — A county borrowed money of the plaintiff beyond its constitutional debt limit, which could be exceeded only with the authority of the voters. The money so received, together with other funds which had been properly obtained, was used in the construction of a courthouse. The plaintiff now sues the corporation on a *quantum meruit*. *Held*, that he cannot recover. *Eaton* v. *Shiawassee County*, 218 Fed. 588 (C. C. A. Sixth Circ.).

The principal case illustrates an important distinction in the law of municipal corporations. Where benefits are received by the corporation pursuant to a contract that is invalid because of failure to observe a statutory requirement as to execution, but which is in substance a contract which the municipality has capacity to make, a quasi-contractual liability arises. *Louisiana* v. *Wood*, 102 U. S. 294; *Reynolds* v. *Lyon County*, 121 Ia. 733, 96 N. W. 1096. And even where there is total lack of capacity to enter into the contract, if the consideration can be readily returned, that must be done. *Crampton* v. *Zabriskie*, 101 U. S. 601; *Turner* v. *Cruzen*, 70 Ia. 202, 30 N. W. 483. But where, as in the principal case, the money has been mingled with other funds and invested in a structure, so that on principles of constructive trust the *res* cannot be followed into a severable product, the outsider has no relief whatever. *Litchfield* v. *Ballou*, 114 U. S. 190; *Bigler* v. *Mayor*, 5 Abb. N. C. (N. Y.) 51. There can be no property right by way of lien or otherwise in the building. *Litchfield* v. *Ballou*, *supra*; *Grady* v. *Pruit*, 111 Ky. 100, 63 S. W. 283. Nor may the claimant have rental. *Gamewell Fire-Alarm Tel. Co.* v. *City of Laporte*, 102 Fed. 417. If the constitution has left the municipal corporation without capacity to create an express liability, there is no alternative for the court but to prevent the same burden from being laid upon the taxpayers indirectly through the action on a *quantum meruit*. See 17 HARV. L. REV. 343.

MUNICIPAL CORPORATIONS — PROCEEDINGS OF COUNCIL OR OTHER GOVERNMENTAL BODY — EFFECT OF BLANK BALLOT. — At an election for school superintendent by a school board, the defendant received five votes, there were three scattered votes, and three blank ballots. A majority of the votes cast was necessary for election. *Held*, that the defendant was duly elected. *Attorney-General* v. *Bickford*, 92 Atl. 835 (N. H.).

When the statute requires affirmative action by a majority of those present, the problem is quite distinct from that involved in the principal case. A blank ballot is then as effectual as a vote against the candidate. *People* v. *Conklin*, 7 Hun (N. Y.) 188; *Commonwealth* v. *Wickersham*, 66 Pa. 134. In the usual case, however, a majority of the votes actually cast is sufficient for an election. In determining the number of votes cast, a minority of jurisdictions, disagreeing with the principal case, hold that a blank ballot must be included, and so in effect count such a ballot against the leading candidate. *Lawrence* v. *Ingersoll*, 88 Tenn. 52, 12 S. W. 422. Thus in one case where each candidate received twenty-two votes and there was one blank ballot, it was held that there was no tie and that the mayor could not vote. *State* v. *Chapman*, 44 Conn. 595. This sufficiently shows the difficulties of the minority doctrine. A blank ballot cannot properly be construed as either for or against a candidate. In so far as it signifies anything it probably expresses an acquiescence in the action of the majority of those actually voting. *Rushville Gas Co.* v. *City of Rushville*, 121 Ind. 206, 23 N. E. 72. But the principal case follows the better view and the weight of authority in holding that a blank ballot should be utterly disregarded. *Murdoch* v. *Strange*, 9 Md. 89, 57 Atl. 628; *Wheeler* v. *Commonwealth*, 98 Ky. 59, 32 S. W. 259.

PRIVACY, RIGHT OF — NATURE AND EXTENT OF THE RIGHT — POSSIBLE INTERESTS IN ONE'S NAME OR PICTURE. — The plaintiff secured from a certain

actress the exclusive right to use her picture on posterettes. The defendant thereafter, with the consent of the actress, published and sold posterettes bearing the same picture. *Held*, that an injunction will not be granted. *Pekas* v. *Leslie*, 52 N. Y. L. J. 1864 (N. Y. Sup. Ct.).

For a discussion of the New York statutory right of privacy and the rights involved in the unauthorized use of one's name or picture, see p. 689 of this issue of the REVIEW.

RAILROADS — LIABILITY FOR DAMAGE TO ANIMALS — BREACH OF DUTY TO FENCE. — The defendant railroad was under a prescriptive duty to maintain a fence between its property and the plaintiff's land. By reason of a defect in the fence, the plaintiff's cattle strayed upon the right of way and were killed by a locomotive. *Held*, that the plaintiff may recover. *Titus* v. *Pennsylvania R. Co.*, 92 Atl. 944 (N. J.).

The plaintiff's horse, through the defendant railroad's breach of its statutory duty to maintain a fence, escaped onto the defendant's tracks and was killed by falling off a bridge. *Held*, that the plaintiff may recover. *Davis* v. *Central Vermont Ry. Co.*, 92 Atl. 973 (Vt.).

Under the English common law, and the prevailing view in this country, maintenance of a division fence by one of two adjoining landowners for the prescriptive period subjects him and his successors to a duty to maintain it perpetually. See GALE, EASEMENTS, 8 ed., p. 465; *Binney* v. *The Proprietors of the Lands in Hull*, 5 Pick. (Mass.) 503. *Castner* v. *Riegel*, 54 N. J. L. 498, 24 Atl. 484. But see *contra*, *Wright* v. *Wright*, 21 Conn. 329, 344; *Glidden* v. *Towle*, 31 N. H. 147, 169. Though generally called a "spurious easement," this obligation might more accurately be described as a prescriptive covenant running with the land. A breach of the obligation renders the owner of the servient land liable to the owner of adjoining land for all damage proximately ensuing from the breach. See GALE, EASEMENTS, 8 ed., p. 465; *Lawrence* v. *Jenkins*, L. R. 8 Q. B. 274. Civil liability for violation of a criminal statute imposing affirmative duties is not so sweeping; it exists only where the harm was clearly one which the statute was designed to prevent. See *Gorris* v. *Scott*, L. R. 9 Ex. 125; 27 HARV. L. REV. 317, 335. Accordingly, where a fencing statute expressly allowed recovery for injury caused by "agents, engines or cars" of the railroad, recovery for other kinds of injury was held to be excluded by implication. See *Schertz* v. *Indianapolis, B. & W. Ry. Co.*, 107 Ill. 577. One section of the fencing laws of Vermont contains a similar provision; but another section with a different legislative history, reaffirming the duty to fence, contains no reference to civil liability. VT. PUB. STATS. §§ 4453–6. The decision that a fall from the track was one of the things for which this section permits civil recovery seems sound.

RAILROADS — REGULATION OF RATES — STATE REGULATION: NON-COMPENSATORY RATES FOR PASSENGERS OR PARTICULAR COMMODITIES. — A North Dakota statute fixed maximum intrastate rates for the transportation of coal in carload lots. After the statute had been enforced for over a year, it was shown that on one of the railroads in question the receipts from the transportation of coal under the new rates exceeded the cost of transportation, including actual out-of-pocket expense of moving it together with all fixed or overhead expenses apportionable to such traffic, by only $847. On the other road in question the total receipts under the new rates, while exceeding the out-of-pocket costs of moving the traffic, were some $9,000 to $12,000 less than the total costs including fixed and overhead expenses chargeable to the coal traffic. *Held*, that the statute is unconstitutional. *Northern Pacific Ry. Co.* v. *North Dakota*, U. S. Sup. Ct. Off. Nos. 420, 421 (March 8, 1915).

A West Virginia statute prescribed a maximum rate of two cents a mile for